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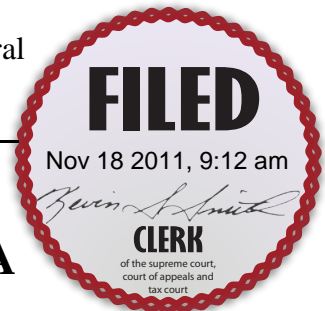
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**IN THE
COURT OF APPEALS OF INDIANA**



TRACY D. MILLER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A05-1102-CR-75

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle III, Judge
Cause No. 48C01-0907-FC-395

November 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Tracy D. Miller (“Miller”) pleaded guilty to armed robbery,¹ a Class B felony, pointing a firearm,² a Class D felony, and criminal confinement,³ a Class D felony, and admitted to being a habitual offender.⁴ The trial court sentenced him to an aggregate term of twenty years executed. Miller appeals contending that his sentence is inappropriate in light of the nature of the offenses and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 23, 2008, Miller and two other men, all wearing masks, entered an Anderson, Indiana beauty salon. Once inside, the men pointed their guns at five patrons and salon workers and demanded their cell phones, purses, cash, and other valuable items. Miller was charged with one count each of armed robbery, pointing a firearm, and confinement, and was alleged to be a habitual offender.

In November 2009, after a jury had been selected, Miller pleaded guilty as charged on the condition that his sentence would be capped at twenty-five years executed. During the sentencing hearing, the State recommended that Miller be sentenced to thirty-nine years with twenty-five years executed in the Indiana Department of Correction and

¹ See Ind. Code § 35-42-5-1.

² See Ind. Code § 35-47-4-3(b).

³ See Ind. Code § 35-42-3-3(a)(1).

⁴ See Ind. Code § 35-50-2-8.

fourteen years suspended to probation.⁵ *Appellant's App.* at 25. Miller maintained that he had worked as a barber for two years, had strong family support to keep him out of trouble, and that twenty-five years would be grossly disproportionate to the minimal sentences given to his co-defendants. *Id.* at 23. The trial court noted Miller's "extensive criminal history" and prior violations of probation as aggravating factors. *Id.* at 27. The trial court also found that it was a mitigating factor that Miller pleaded guilty. *Id.* The fact that he did so only after the jury had been selected, however, lessened its mitigating effect. *Id.* The trial court sentenced Miller to an aggregate term of twenty years executed, which consisted of concurrent sentences of ten years for the Class B felony robbery conviction and three years for each of the Class D felony convictions, plus a ten-year enhancement of the robbery conviction for being a habitual offender. Miller now appeals.

DISCUSSION AND DECISION

Miller contends that his sentence is inappropriate in light of the nature of the offenses and the character of the offender. Specifically, he contends that his sentence should not be greater than those of his co-defendants.

"This court has authority to revise a sentence 'if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.'" *Spitler v. State*, 908 N.E.2d 694,

⁵ As the State noted in its brief, "A transcript of the sentencing hearing is not included in the record before us because of a recording equipment malfunction. As a result, [Miller] filed a motion for preparation of statement of evidence pursuant to Indiana Appellate Rule 31. [Miller]'s counsel and the chief deputy prosecutor each filed a statement of evidence affidavit. The trial court certified the statements of evidence." *Appellee's Br.* at 2 n.1 (citing *Appellant's App.* at 21, 23-25, 26-27).

696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. “Although Indiana Appellate Rule 7(B) does not require us to be ‘extremely’ deferential to a trial court’s sentencing decision, we still must give due consideration to that decision.” *Patterson v. State*, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id.* at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id.*

As to the nature of the offense, Miller participated in a planned robbery. He and two other masked men entered a beauty salon. Miller pointed a loaded firearm at the patrons and workers inside and ordered them to hand over their purses, cell phones, cash, and other valuables. Miller engaged in a premeditated, violent crime, with two other men. As to his character, Miller has a prior Class B felony robbery conviction and three prior felony cocaine convictions. While the instant case was pending, Miller also had a warrant out for his arrest with a \$100,000 bond in Marion County for Class A felony dealing in cocaine.

The advisory sentence for a crime is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Richardson v. State*, 906 N.E.2d 241, 247 (Ind. Ct. App. 2009). Miller was convicted of one Class B felony and two Class D felonies. The advisory sentence for a Class B felony is ten years. Ind. Code § 35-50-2-5. The advisory sentence for a Class D felony is one and one-half years. Ind. Code § 35-50-2-7. The trial court ordered Miller’s three sentences to run concurrently, which resulted in Miller being sentenced to ten years for the underlying three convictions. The

additional ten years was imposed only as an enhancement for Miller's status as a habitual offender.

Miller asks this court to compare his sentence to that of those with whom he committed the crime. Miller, however, was sentenced pursuant to the terms of his own plea agreement, i.e., that he would plead guilty on the condition that his executed sentence be capped at twenty-five years. The trial court sentenced Miller to twenty years, the advisory sentence of ten years for his Class B felony plus a ten-year enhancement for his status as a habitual offender. The question for this court under Appellate Rule 7(B) analysis is "not whether another sentence is *more* appropriate; rather the question is whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Miller has failed to persuade us that his sentence is inappropriate.

Affirmed.

BAKER, J., and BROWN, J., concur.